

HOUSE BILL No. 1295

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-12-5-4; IC 35-33-8-7; IC 35-38-2-2.3; IC 35-42-1-3; IC 35-48-4-2.

Synopsis: Criminal law issues. Provides that a defendant's bond will be automatically forfeited if a defendant fails to appear for court unless the court orders the defendant's bond to not be forfeited. Provides that a defendant's bond will be automatically forfeited if a defendant is charged with a new offense while out on bond unless the court orders the defendant's bond to not be forfeited. Requires a defendant serving a probationary term for domestic violence to surrender all firearms and gun permits to a specified law enforcement agency. Increases the penalty for voluntary manslaughter from a Level 2 felony to a Level 1 felony. Provides that the delivery of heroin to a user that results in the user's death is a Level 3 felony.

Effective: July 1, 2015.

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January 13, 2015, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1295

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-12-5-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. Sections 2 and 3 of
3 this chapter do not apply to a person serving a term of imprisonment
4 under ~~IC 35-38-2-2.3(c)~~: **IC 35-38-2-2.3(d)**.
5 SECTION 2. IC 35-33-8-7, AS AMENDED BY P.L.105-2010,
6 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2015]: Sec. 7. (a) If a defendant:
8 (1) was admitted to bail under section 3.2(a)(2) of this chapter;
9 and
10 (2) has failed to appear before the court as ordered;
11 the court shall, except as provided in subsection ~~(b)~~ **(c)** or section 8(b)
12 of this chapter, declare the bond forfeited not earlier than ~~one hundred~~
13 ~~twenty~~ **(120) sixty (60)** days after the defendant's failure to appear and
14 issue a warrant for the defendant's arrest **unless the court orders the**
15 **bond to not be forfeited.**



1 **(b) If a defendant:**

2 **(1) was admitted to bail under section 3.2(a)(2) of this**
 3 **chapter; and**

4 **(2) has failed to appear before the court as ordered;**

5 **and the state has presented clear and convincing evidence that,**
 6 **while admitted to bail, the defendant has been charged with a new**
 7 **offense, the bond, except as provided in subsection (c) or section**
 8 **8(b) of this chapter, shall be immediately forfeited and a warrant**
 9 **issued for the defendant's arrest unless the court orders the bond**
 10 **to not be forfeited.**

11 ~~(b)~~ **(c)** In a criminal case, if the court having jurisdiction over the
 12 criminal case receives written notice of a pending civil action or
 13 unsatisfied judgment against the criminal defendant arising out of the
 14 same transaction or occurrence forming the basis of the criminal case,
 15 funds deposited with the clerk of the court under section 3.2(a)(2) of
 16 this chapter may not be declared forfeited by the court, and the court
 17 shall order the deposited funds to be held by the clerk. If there is an
 18 entry of final judgment in favor of the plaintiff in the civil action, and
 19 if the deposit and the bond are subject to forfeiture, the criminal court
 20 shall order payment of all or any part of the deposit to the plaintiff in
 21 the action, as is necessary to satisfy the judgment. The court shall then
 22 order the remainder of the deposit, if any, and the bond forfeited.

23 ~~(c)~~ **(d)** Any proceedings concerning the bond, or its forfeiture,
 24 judgment, or execution of judgment, shall be held in the court that
 25 admitted the defendant to bail.

26 ~~(d)~~ **(e)** After a bond has been forfeited under subsection (a), ~~or~~ (b),
 27 **or (c)**, the clerk shall mail notice of forfeiture to the defendant. In
 28 addition, unless the court finds that there was justification for the
 29 defendant's failure to appear, the court shall immediately enter
 30 judgment, without pleadings and without change of judge or change of
 31 venue, against the defendant for the amount of the bail bond, and the
 32 clerk shall record the judgment.

33 ~~(e)~~ **(f)** If a bond is forfeited and the court has entered a judgment
 34 under subsection ~~(d)~~ **(e)** the clerk shall transfer to the state common
 35 school fund:

36 **(1) any amount remaining on deposit with the court (less the fees**
 37 **retained by the clerk); and**

38 **(2) any amount collected in satisfaction of the judgment.**

39 ~~(f)~~ **(g)** The clerk shall return a deposit, less the administrative fee,
 40 made under section 3.2(a)(2) of this chapter to the defendant, if the
 41 defendant appeared at trial and the other critical stages of the legal
 42 proceedings.



1 SECTION 3. IC 35-38-2-2.3, AS AMENDED BY P.L.13-2013,
2 SECTION 138, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2015]: Sec. 2.3. (a) ~~As a condition of probation,~~
4 **Except as provided in subsection (b),** the court, **as a condition of**
5 **probation,** may require a person to do a combination of the following:

- 6 (1) Work faithfully at suitable employment or faithfully pursue a
7 course of study or career and technical education that will equip
8 the person for suitable employment.
- 9 (2) Undergo available medical or psychiatric treatment and
10 remain in a specified institution if required for that purpose.
- 11 (3) Attend or reside in a facility established for the instruction,
12 recreation, or residence of persons on probation.
- 13 (4) Participate in a treatment program, educational class, or
14 rehabilitative service provided by a probation department or by
15 referral to an agency.
- 16 (5) Support the person's dependents and meet other family
17 responsibilities.
- 18 (6) Make restitution or reparation to the victim of the crime for
19 damage or injury that was sustained by the victim. When
20 restitution or reparation is a condition of probation, the court shall
21 fix the amount, which may not exceed an amount the person can
22 or will be able to pay, and shall fix the manner of performance.
- 23 (7) Execute a repayment agreement with the appropriate
24 governmental entity to repay the full amount of public relief or
25 assistance wrongfully received, and make repayments according
26 to a repayment schedule set out in the agreement.
- 27 (8) Pay a fine authorized by IC 35-50.
- 28 (9) Refrain from possessing a firearm or other deadly weapon
29 unless granted written permission by the court or the person's
30 probation officer.
- 31 (10) Report to a probation officer at reasonable times as directed
32 by the court or the probation officer.
- 33 (11) Permit the person's probation officer to visit the person at
34 reasonable times at the person's home or elsewhere.
- 35 (12) Remain within the jurisdiction of the court, unless granted
36 permission to leave by the court or by the person's probation
37 officer.
- 38 (13) Answer all reasonable inquiries by the court or the person's
39 probation officer and promptly notify the court or probation
40 officer of any change in address or employment.
- 41 (14) Perform uncompensated work that benefits the community.
- 42 (15) Satisfy other conditions reasonably related to the person's



1 rehabilitation.

2 (16) Undergo home detention under IC 35-38-2.5.

3 (17) Undergo a laboratory test or series of tests approved by the
4 state department of health to detect and confirm the presence of
5 the human immunodeficiency virus (HIV) antigen or antibodies
6 to the human immunodeficiency virus (HIV), if:

7 (A) the person had been convicted of an offense relating to a
8 criminal sexual act and the offense created an
9 epidemiologically demonstrated risk of transmission of the
10 human immunodeficiency virus (HIV); or

11 (B) the person had been convicted of an offense relating to a
12 controlled substance and the offense involved:

13 (i) the delivery by any person to another person; or

14 (ii) the use by any person on another person;

15 of a contaminated sharp (as defined in IC 16-41-16-2) or other
16 paraphernalia that creates an epidemiologically demonstrated
17 risk of transmission of HIV by involving percutaneous contact.

18 (18) Refrain from any direct or indirect contact with an individual
19 and, if convicted of an offense under IC 35-46-3, any animal
20 belonging to the individual.

21 (19) Execute a repayment agreement with the appropriate
22 governmental entity or with a person for reasonable costs incurred
23 because of the taking, detention, or return of a missing child (as
24 defined in IC 10-13-5-4).

25 (20) Periodically undergo a laboratory chemical test (as defined
26 in IC 9-13-2-22) or series of chemical tests as specified by the
27 court to detect and confirm the presence of a controlled substance
28 (as defined in IC 35-48-1-9). The person on probation is
29 responsible for any charges resulting from a test and shall have
30 the results of any test under this subdivision reported to the
31 person's probation officer by the laboratory.

32 (21) If the person was confined in a penal facility, execute a
33 reimbursement plan as directed by the court and make repayments
34 under the plan to the authority that operates the penal facility for
35 all or part of the costs of the person's confinement in the penal
36 facility. The court shall fix an amount that:

37 (A) may not exceed an amount the person can or will be able
38 to pay;

39 (B) does not harm the person's ability to reasonably be self
40 supporting or to reasonably support any dependent of the
41 person; and

42 (C) takes into consideration and gives priority to any other



- 1 restitution, reparation, repayment, or fine the person is
2 required to pay under this section.
- 3 (22) Refrain from owning, harboring, or training an animal.
- 4 (23) Participate in a reentry court program.
- 5 **(b) When a person is placed on probation for a crime of**
6 **domestic violence as defined by IC 35-31.5-2-76, the court shall:**
- 7 **(1) order the defendant to surrender all firearms in the**
8 **defendant's possession to a specified law enforcement agency;**
9 **(2) order the defendant to surrender all handgun permits in**
10 **the defendant's possession to a specified law enforcement**
11 **agency; and**
12 **(3) in the case of a defendant who possessed a handgun permit**
13 **before conviction, inform the superintendent as defined under**
14 **IC 35-47-1-12 that the defendant is no longer a "proper**
15 **person" under IC 35-47-1-7.**
- 16 ~~(b)~~ (c) When a person is placed on probation, the person shall be
17 given a written statement specifying:
- 18 (1) the conditions of probation; and
- 19 (2) that if the person violates a condition of probation during the
20 probationary period, a petition to revoke probation may be filed
21 before the earlier of the following:
- 22 (A) One (1) year after the termination of probation.
- 23 (B) Forty-five (45) days after the state receives notice of the
24 violation.
- 25 ~~(c)~~ (d) As a condition of probation, the court may require that the
26 person serve a term of imprisonment in an appropriate facility at the
27 time or intervals (consecutive or intermittent) within the period of
28 probation the court determines.
- 29 ~~(d)~~ (e) Intermittent service may be required only for a term of not
30 more than sixty (60) days and must be served in the county or local
31 penal facility. The intermittent term is computed on the basis of the
32 actual days spent in confinement and shall be completed within one (1)
33 year. A person does not earn credit time while serving an intermittent
34 term of imprisonment under this subsection. When the court orders
35 intermittent service, the court shall state:
- 36 (1) the term of imprisonment;
- 37 (2) the days or parts of days during which a person is to be
38 confined; and
- 39 (3) the conditions.
- 40 ~~(e)~~ (f) Supervision of a person may be transferred from the court
41 that placed the person on probation to a court of another jurisdiction,
42 with the concurrence of both courts. Retransfers of supervision may



occur in the same manner. This subsection does not apply to transfers made under IC 11-13-4 or IC 11-13-5.

~~(f)~~ **(g)** When a court imposes a condition of probation described in subsection (a)(18):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

~~(g)~~ **(h)** As a condition of probation, a court shall require a person:

(1) convicted of an offense described in IC 10-13-6-10;

(2) who has not previously provided a DNA sample in accordance with IC 10-13-6; and

(3) whose sentence does not involve a commitment to the department of correction;

to provide a DNA sample as a condition of probation.

~~(h)~~ **(i)** If a court imposes a condition of probation described in subsection (a)(4), the person on probation is responsible for any costs resulting from the participation in a program, class, or service. Any costs collected for services provided by the probation department shall be deposited in the county or local supplemental adult services fund.

SECTION 4. IC 35-42-1-3, AS AMENDED BY P.L.158-2013, SECTION 413, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) A person who knowingly or intentionally:

(1) kills another human being; or

(2) kills a fetus that has attained viability (as defined in IC 16-18-2-365);

while acting under sudden heat commits voluntary manslaughter, a ~~Level 2~~ **Level 1** felony.

(b) The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder under section 1(1) of this chapter to voluntary manslaughter.

SECTION 5. IC 35-48-4-2, AS AMENDED BY P.L.226-2014(TS), SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

a controlled substance, pure or adulterated, classified in schedule I, II, or III, except marijuana, hash oil, hashish, salvia, or a



- 1 synthetic drug; or
- 2 (2) possesses, with intent to:
- 3 (A) manufacture;
- 4 (B) finance the manufacture of;
- 5 (C) deliver; or
- 6 (D) finance the delivery of;
- 7 a controlled substance, pure or adulterated, classified in schedule
- 8 I, II, or III, except marijuana, hash oil, hashish, salvia, or a
- 9 synthetic drug;
- 10 commits dealing in a schedule I, II, or III controlled substance, a Level
- 11 6 felony, except as provided in subsections (b) through (f).
- 12 (b) A person may be convicted of an offense under subsection (a)(2)
- 13 only if there is evidence in addition to the weight of the drug that the
- 14 person intended to manufacture, finance the manufacture of, deliver,
- 15 or finance the delivery of the drug.
- 16 (c) The offense is a Level 5 felony if:
- 17 (1) the amount of the drug involved is at least one (1) gram but
- 18 less than five (5) grams; or
- 19 (2) the amount of the drug involved is less than one (1) gram and
- 20 an enhancing circumstance applies.
- 21 (d) The offense is a Level 4 felony if:
- 22 (1) the amount of the drug involved is at least five (5) but less
- 23 than ten (10) grams; or
- 24 (2) the amount of the drug involved is at least one (1) gram but
- 25 less than five (5) grams and an enhancing circumstance applies.
- 26 (e) The offense is a Level 3 felony if:
- 27 (1) the amount of the drug involved is at least ten (10) but less
- 28 than twenty-eight (28) grams; ~~or~~
- 29 (2) the amount of the drug involved is at least five (5) but less
- 30 than ten (10) grams and an enhancing circumstance applies; ~~or~~
- 31 **(3) a defendant's delivery of heroin to a heroin user results in**
- 32 **the user's death.**
- 33 (f) The offense is a Level 2 felony if:
- 34 (1) the amount of the drug involved is at least twenty-eight (28)
- 35 grams; or
- 36 (2) the amount of the drug involved is at least ten (10) but less
- 37 than twenty-eight (28) grams and an enhancing circumstance
- 38 applies.

